

ASSEMBLY BILL

No. 2333

Introduced by Assembly Member Parra

February 23, 2006

An act to amend Sections 530.5 and 803 of the Penal Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 2333, as introduced, Parra. Identity theft.

Existing law provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information of another person is guilty of a crime punishable by imprisonment in a county jail for a period not to exceed one year, a fine not to exceed \$1,000 or a fine not to exceed \$1,500 if the person has been ordered to serve temporary military duty outside of the state, or by both that imprisonment and fine.

This bill would also provide that every person who acquires, transfers, or retains possession of the personal identifying information of 5 or more other persons without their consent is guilty of a crime punishable by imprisonment in a county jail for a period not to exceed one year, or a fine not to exceed \$1,000, or by both that imprisonment and fine.

Because this bill would create a new crime, it would impose a state-mandated, local program.

Existing law provides that in general the prosecution for an offense punishable by imprisonment in the state prison shall be commenced within 3 years after commission of the offense. Existing law provides, however, that with respect to a list of specified crimes involving fraud or public officials, this 3-year limitation period is tolled until the discovery of the crime.

This bill would revise the latter provision to include the crime of identity theft within the list of crimes for which the 3-year limitation period is tolled until the discovery of the crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 530.5 of the Penal Code is amended to
2 read:

3 530.5. (a) Every person who willfully obtains personal
4 identifying information, as defined in subdivision (b), of another
5 person, and uses that information for any unlawful purpose,
6 including to obtain, or attempt to obtain, credit, goods, services,
7 or medical information in the name of the other person without
8 the consent of that person, is guilty of a public offense, and upon
9 conviction therefor, shall be punished either by imprisonment in
10 a county jail not to exceed one year, a fine not to exceed one
11 thousand dollars (\$1,000), or both that imprisonment and fine, or
12 by imprisonment in the state prison, a fine not to exceed ten
13 thousand dollars (\$10,000), or both that imprisonment and fine.

14 (b) "Personal identifying information," as used in this section,
15 means the name, address, telephone number, health insurance
16 identification number, taxpayer identification number, school
17 identification number, state or federal driver's license number, or
18 identification number, social security number, place of
19 employment, employee identification number, mother's maiden
20 name, demand deposit account number, savings account number,
21 checking account number, PIN (personal identification number)
22 or password, alien registration number, government passport
23 number, date of birth, unique biometric data including
24 fingerprint, facial scan identifiers, voice print, retina or iris
25 image, or other unique physical representation, unique electronic
26 data including identification number, address, or routing code,

1 telecommunication identifying information or access device,
2 information contained in a birth or death certificate, or credit card
3 number of an individual person.

4 (c) In any case in which a person willfully obtains personal
5 identifying information of another person, uses that information
6 to commit a crime in addition to a violation of subdivision (a),
7 and is convicted of that crime, the court records shall reflect that
8 the person whose identity was falsely used to commit the crime
9 did not commit the crime.

10 (d) Every person who, with the intent to defraud, acquires,
11 transfers, or retains possession of the personal identifying
12 information, as defined in subdivision (b), of another person is
13 guilty of a public offense, and upon conviction therefor, shall be
14 punished by imprisonment in a county jail not to exceed one
15 year, or a fine not to exceed one thousand dollars (\$1,000), or by
16 both that imprisonment and fine.

17 (e) Every person who, with the intent to defraud, acquires,
18 transfers, or retains possession of the personal identifying
19 information, as defined in subdivision (b), of another person who
20 is deployed to a location outside of the state is guilty of a public
21 offense, and upon conviction therefor, shall be punished by
22 imprisonment in a county jail not to exceed one year, or a fine
23 not to exceed one thousand five hundred dollars (\$1,500), or by
24 both that imprisonment and fine.

25 (f) *Every person who acquires, transfers, or retains possession*
26 *of the personal identifying information, as defined in subdivision*
27 *(b), of five or more other persons without their consent is guilty*
28 *of a public offense, and upon conviction therefor, shall be*
29 *punished by imprisonment in a county jail not to exceed one*
30 *year, or a fine not to exceed one thousand dollars (\$1,000), or by*
31 *both that imprisonment and fine.*

32 (g) For purposes of this section, “deployed” means that the
33 person has been ordered to serve temporary military duty during
34 a period when a presidential executive order specifies that the
35 United States is engaged in combat or homeland defense and he
36 or she is either a member of the armed forces, or is a member of
37 the armed forces reserve or the National Guard, who has been
38 called to active duty or active service. It does not include
39 temporary duty for the sole purpose of training or processing or a
40 permanent change of station.

SEC. 2. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(12) A violation of Section 530.5.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in

1 Section 804 within the limitations of time prescribed by this
2 chapter, and no time up to a maximum of three years during
3 which the defendant is not within the state shall be a part of those
4 limitations.

5 (e) A limitation of time prescribed in this chapter does not
6 commence to run until the offense has been discovered, or could
7 have reasonably been discovered, with regard to offenses under
8 Division 7 (commencing with Section 13000) of the Water Code,
9 under Chapter 6.5 (commencing with Section 25100) of, Chapter
10 6.7 (commencing with Section 25280) of, or Chapter 6.8
11 (commencing with Section 25300) of, Division 20 of, or Part 4
12 (commencing with Section 41500) of Division 26 of, the Health
13 and Safety Code, or under Section 386, or offenses under
14 Chapter 5 (commencing with Section 2000) of Division 2 of,
15 Chapter 9 (commencing with Section 4000) of Division 2 of,
16 Section 6126 of, Chapter 10 (commencing with Section 7301) of
17 Division 3 of, or Chapter 19.5 (commencing with Section 22440)
18 of Division 8 of, the Business and Professions Code.

19 (f) (1) Notwithstanding any other limitation of time described
20 in this chapter, a criminal complaint may be filed within one year
21 of the date of a report to a California law enforcement agency by
22 a person of any age alleging that he or she, while under the age of
23 18 years, was the victim of a crime described in Section 261,
24 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by
25 Chapter 293 of the Statutes of 1991 relating to penetration by an
26 unknown object.

27 (2) This subdivision applies only if all of the following occur:

28 (A) The limitation period specified in Section 800, 801, or
29 801.1, whichever is later, has expired.

30 (B) The crime involved substantial sexual conduct, as
31 described in subdivision (b) of Section 1203.066, excluding
32 masturbation that is not mutual.

33 (C) There is independent evidence that corroborates the
34 victim's allegation. If the victim was 21 years of age or older at
35 the time of the report, the independent evidence shall clearly and
36 convincingly corroborate the victim's allegation.

37 (3) No evidence may be used to corroborate the victim's
38 allegation that otherwise would be inadmissible during trial.
39 Independent evidence does not include the opinions of mental
40 health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, “DNA” means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects

1 the definition or applicability of any evidentiary privilege or
2 attorney work product.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.